

CONFIDENTIAL
Security Information

23 September 1953

OGC HAS REVIEWED.Memorandum for the Record
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From: [REDACTED]

Subject: Collection of Overdue Accounts

1. Memorandum of 17 September 1953 from Mr. Houston, subject: Collection of Overdue Accounts, questions the propriety of a prospective regulation which has as its purpose accelerating overdue accounts through withholding of an employee's pay at a specified rate. Apparently Finance has advised informally that this practice is permissible. Mr. Houston has reserved opinion and requested that the office pursue the matter.

2. Decisions of the Comptroller General state that the general rule of set-off is inherent in the United States. 1 Comp. Gen. 605, 606, provides in pertinent part as follows:

"...Every creditor has the right to apply the moneys of his debtor in his hands in the extinguishment of claims due him from the debtor. This is a common-law right and may be exercised on general principles without the aid of a statute. See Barry v. United States, 229 U.S. 47; 15 Pet., 370; 98 U.S. 186; 4 Lawrence 1 Comp. Dec. 504."

3. There are restrictions to the exercise of this right however, and the general rule is not for application insofar as it concerns the withholding of current salary payments of officers and employees of the Government while still in the service. 23 C. G. 555; 17 id. 12; 19 C. G. 64; 16 C. G. 161; id. 547; id. 826; Smith v. Jackson, 246 U.S. 388; and McCarl v. Pence, 18 F. 2d 809.

4. Under the terms of the Act of May 26, 1936, 49 Stat. 1374, amended August 3, 1950, c. 515, 64 Stat. 393, Public Law 633, 81st Congress, there is authorized the withholding of compensation to any person in the executive branch of the Government whenever upon the statement of the account of a disbursing officer or certifying officer in the General Accounting Office credit shall have been disallowed for any payment to such person. The amendment referred to was inserted to provide a remedy formerly available only to disbursing officers and to authorize the head of the agency to withhold compensation to

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Government personnel when they are indebted to the United States by reason of overpayment or from some other transaction under which the employee received an overpayment or improper receipt of public funds. See 1950 U. S. Code Congressional Service, pages 2860-2862.

5. In considering the various rulings of the Comptroller General on the problem of set-off, it becomes apparent that the withholding by the agency or department concerned flows from charges being raised against disbursing or certifying officers in the General Accounting Office. (32 C. G. 101, 102). In other words, the cited decision holds that the agency concerned is to receive a notice from the General Accounting Office that charges have been raised at which time the withholding of current compensation would be authorized under the terms of Public Law 633. With respect to the withholding of an employee's final salary and lump-sum payment, the following quotation is pertinent:

"Also, the authorization herein for payment of current salary should not, of course, be construed as precluding the withholding of the employee's final salary and lump-sum payment for accrued annual leave for application to any indebtedness remaining at the time of his separation. 29 Comp. Gen. 93."

6. The Act of June 9, 1949, c. 185, section 5, 63 Stat. 166; 5 U.S.C. 838, authorizes deductions by set-off of salary due, retirement credit, or otherwise. The provisions of this statute are carried over to, and become a part of, paragraph 96 of the Standardized Government Travel Regulations, as amended.

7. In view of the foregoing, paragraph 10.11 of the Confidential Funds Regulations should be scrutinized closely inasmuch as the language of this paragraph provides the basis of the regulation which Mr. Houston has informally questioned. According to [REDACTED] DD/P, and Mr. [REDACTED] DD/A, the regulation concerned will not be published without the coordination of this office.

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Assistant General Counsel

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